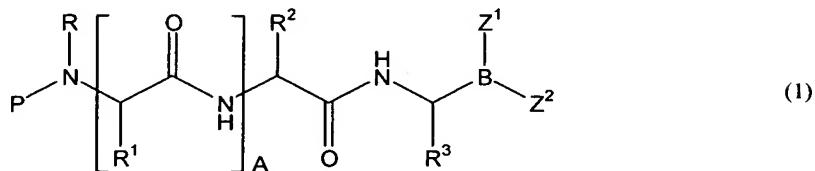


*REMARKS/ARGUMENTS**The Present Invention*

The invention provides a compound of the formula (1):



in which  $Z^1$  and  $Z^2$  are moieties derived from sugar. The invention also provides a lyophilized compound of formula (1), a composition comprising the compound of formula (1), and a lyophilized cake comprising the compound of formula (1). The invention further provides a method for preparing such a compound.

*The Pending Claims*

Claims 1-5, 8-12, 14-21, 24-28, 30-38, 41-47, and 49-114 are currently pending.

*Information Disclosure Statement*

An Information Disclosure Statement was submitted on September 18, 2003, which included references AA-BG. Applicant hereby requests that the Examiner confirm consideration of the references cited therein (i.e., references AA-BG) by returning to Applicant an Examiner-initialed PTO-1449 form.

*Amendment to the Specification and Claims*

The specification has been amended to update the claim of priority.

Claims 15, 16, 31, and 32 have been amended to remove the word “a” since this term is unnecessary. In addition, claim 16 has been amended to add a space between the terms “claim 1,” and “wherein.”

No new matter has been added by way of these amendments.

*Summary of the Office Action*

The pending claims have been rejected under the judicially created doctrine of double patenting over one or more of claims 1-50 of U.S. Patent 6,699,835 (hereinafter “the ‘835 patent”) and/or one or more of claims 1-92 of U.S. Patent 6,713,446 (hereinafter “the ‘446 patent”). Reconsideration of the pending claims is respectfully requested.

*Discussion of the Obviousness-Type Double Patenting Rejections*

According to the Office Action, the subject matter of the pending claims is fully disclosed in the '835 and '446 patents and would be covered by the '835 and '446 patents since both of the issued patents and the present application are claiming common subject matter.

Applicant maintains that the double patenting rejections of the pending claims in view of the '835 and '446 patents are improper for the following reason. In making the obviousness-type double patenting rejections, Applicant maintains the Office has improperly used the specification of the '835 and '446 patents as though each was prior art to the present application rather than looking to the *claims* of the '835 and '446 patents (which represent the only proper source material of such patents to support a double patenting rejection). It is well-settled that the specification of the earlier patent is not to be used to support an obviousness-type double patenting rejection of the claims of a patent application or a later patent. *In re Kaplan*, 789 F.2d 1574, 1577-78, 229 U.S.P.Q. 678, 681 (Fed. Cir. 1986); see also *Geneva Pharmaceuticals, Inc. v. Glaxosmithkline PLC*, 349 F.3d 1373, 1385, 68 U.S.P.Q.2d 1865, 1875 (Fed. Cir. 2003) (“Because nonstatutory double patenting compares earlier and later claims, an earlier patent’s disclosure is not available to show nonstatutory double patenting.”), citing *General Foods Corp. v. Studiengesellschaft Kohle mbH*, 972 F.2d 1272, 1281-82, 23 U.S.P.Q.2d 1839, 1846 (Fed. Cir. 1992).

*A. U.S. Patent 6,699,835*

Since only the claims of the '835 patent may be used in considering an obviousness-type double patenting rejection, Applicant submits that the pending claims are not obvious in view of the claims of the '835 patent for the following reason.

Applicants note that through a Patent Office printing error, claims 1-92 appear in the '835 patent. A Certificate of Correction for the '835 patent indicates that the issued claims of the '835 patent are claims 52-61 and 69-78 *only* (copy enclosed). Thus, the claims of the '835 patent relied upon in support of the rejection in the Office Action, i.e., claims 1-50, are not actually issued claims of the '835 patent. In addition, the Office did not rely upon any of claims 52-61 or 69-78 of the '835 patent in support of the rejection. As such, the obviousness-type double patenting rejection in view of the '835 patent is without merit and should be withdrawn.

*B. U.S. Patent 6,713,446*

Applicant submits and encloses herewith a terminal disclaimer for the present application with respect to the '446 patent. In view of the terminal disclaimer, the obviousness-type double patenting rejection should be withdrawn.

*Conclusion*

The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

  
John Kilyk, Jr., Reg. No. 36,763  
LEXDIG, VOIT & MAYER, LTD.  
Two Prudential Plaza, Suite 4900  
180 North Stetson Avenue  
Chicago, Illinois 60601-6780  
(312) 616-5600 (telephone)  
(312) 616-5700 (facsimile)

Date: May 6, 2005

Amendment or ROA - Regular (Revised 2005 04 13))